

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service or by a statement that service is not required, stating the reason therefor.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in § 1502.3.

§ 1502.24 Petition to participate in forma pauperis.

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commission a petition to participate *in forma pauperis*.

(b) The petition will be captioned: "Request to Participate *In Forma Pauperis*, Docket No. ____." Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted; The petition must demonstrate that either:

(1) The participant is indigent and a strong public interest justifies participation, or

(2) The participant's participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commission may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the Office of the Secretary. The Office of the Secretary will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

§ 1502.25 Disclosure of data and information to be relied on by the participants.

(a) Before the notice of hearing is published under § 1502.13, the Assistant General Counsel for Regulatory Affairs shall submit the following to the Office of the Secretary:

(1) The relevant portions of the administrative record of the proceeding. Portions of the administrative record

not relevant to the issues in the hearing are not required to be submitted.

(2) All other documentary data and information relied upon.

(3) A narrative position statement on the factual issues in the notice of hearing and the type of supporting evidence the Assistant General Counsel intends to introduce.

(b) Within 60 days of the publication of the notice of hearing or, if no participant will be prejudiced, within another period of time set by the presiding officer, each participant shall submit to the Office of the Secretary all data and information specified in paragraph (a) (2) and (3) of this section and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete, and any documents in the participants' files containing factual information, whether favorable or unfavorable to the regulation issued by the Commission, which relates to the issues involved in the hearing.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material in the supplement was not reasonably known or available when the submission was made, that the relevance of the material contained in the supplement could not reasonably have been foreseen, or that admission of the material in the supplement is necessary for a fair determination of the issues involved in the hearing.

(d) A participant's failure to comply substantially and in good faith with this section constitutes a waiver of the right to participate further in the hearing; failure of a party to comply constitutes a waiver of the right to a hearing.

(e) Participants may reference each other's submissions. To reduce duplicative submissions, participants are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 1502.26 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) Direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral direct testimony. If the proceeding involves particular issues, each party may determine whether, and the extent to which, each wishes to present direct testimony orally or in writing.

(2) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination will be prejudiced by denial of the request or that oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(3) Witnesses shall give testimony under oath.

(c) A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

§ 1502.27 Participation of nonparties.

- (a) A nonparty participant may—
 - (1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;
 - (2) Submit written testimony and documentary evidence for inclusion in the record;
 - (3) File written objections, briefs, and other pleadings; and
 - (4) Present oral argument.

- (b) A nonparty participant may not—
 - (1) Submit written interrogatories; or
 - (2) Conduct cross-examination.

(c) A person whose petition is the subject of the hearing has the same right as a party.

(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

§ 1502.28 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing shall constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 1502.29 Time and place of prehearing conference.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At the prehearing conference, insofar as practicable at that time, the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination, if leave to conduct oral examination is granted on any issue.